

BEFORE THE DEPARTMENT  
OF PUBLIC SERVICE REGULATION  
OF THE STATE OF MONTANA

In the matter of the adoption of New     ) NOTICE OF PUBLIC HEARING  
Rule I and the amendment of ARM     ) ON PROPOSED ADOPTION AND  
38.5.8301 pertaining to renewable     ) AMENDMENT  
energy standards for public utilities     )  
and electricity suppliers     )

TO: All Concerned Persons

1. On November 29, 2007, at 10:00 a.m., the Department of Public Service Regulation will hold a public hearing in the Bollinger Room of the Public Service Commission offices, 1701 Prospect Avenue, at Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The Department of Public Service Regulation will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Service Regulation no later than 4:00 p.m. on November 22, 2007, to advise us of the nature of the accommodation that you need. Please contact Connie Jones, commission secretary, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana, 59620-2601; telephone (406) 444-6170; fax (406) 444-7618; TDD (406) 444-6199; or e-mail [conniej@mt.gov](mailto:conniej@mt.gov).

3. The new rule as proposed to be adopted provides as follows:

NEW RULE I RENEWABLE ENERGY STANDARD -- ELECTRICITY SUPPLIERS (1) This rule applies to any electricity supplier that supplied electricity to one or more retail customers at any time during the twelve-month period immediately preceding a compliance year.

(2) The following definitions apply to this rule:

(a) "billing demand" means actual metered demand or, if service is not metered, an engineering calculation of demand;

(b) "electricity supplier" means any person, corporation, business entity or government entity that sells electricity to retail customers in the state of Montana and that is not a public utility or cooperative utility;

(c) "individual load" means the sum of the billing demands of each metered and/or unmetered account of a retail customer;

(d) "retail customer" means any customer that purchases electricity supply for residential, commercial or industrial end-use purposes, does not resell electricity to others, and is separately identified in a public utility's billing system as a person or entity to which bills are sent for service to:

- (i) metered and/or unmetered facilities located on contiguous property;
- (ii) public street and/or highway lights; and

(iii) any combination of (i) and (ii);

(3) On an annual basis on or before March 31, an electricity supplier must submit to the commission a report disclosing:

(a) total number of retail customers served by month for the twelve month period ending December 31 of the prior year;

(b) total billed retail sales of electrical energy, measured in kilowatt-hours, by month for the twelve month period ending December 31 of the prior year;

(c) for each retail customer, billed sales of electrical energy, measured in kilowatt-hours, by month for the twelve month period ending December 31 of the prior year; and

(d) for each demand-metered retail customer, individual load by month for the twelve month period ending December 31 of the prior year;

(4) An electricity supplier may assign a unique number to each retail customer subject to the reporting requirement in (3)(c) and (3)(d) to protect the customer's identity. Based on the information in an electricity supplier's annual report, an officer must attest to whether or not the electricity supplier was a competitive electricity supplier during the period covered by the annual report. An electricity supplier must consent by signature of an officer to release by a public utility of the electricity supplier's retail customer load information to the commission for purposes of verifying information in an electricity supplier's annual report.

(5) If an electricity supplier is a competitive electricity supplier in any compliance year the electricity supplier's annual report must demonstrate compliance with the renewable energy standards. Pursuant to 69-3-2004, MCA, a competitive electricity supplier must satisfy the renewable energy standard for all retail sales of electricity in Montana, which may exceed sales to small retail customers. Report blanks for demonstrating compliance are available from the commission.

(6) Renewable energy credits used to comply with the renewable energy standards must be generated by eligible renewable resources, as defined in 69-3-2003 (7), MCA. A competitive electricity supplier must petition the commission to certify any source of renewable energy credits used to comply with the renewable energy standards.

(7) Renewable energy credits used to comply with the renewable resource standards must be tracked and verified through WREGIS unless otherwise specifically authorized by the commission. A competitive electricity supplier may request authorization to use a renewable energy credit tracking and verification mechanism other than WREGIS by submitting a written request to the commission. The commission will consider the request after noticing the request and providing interested persons an opportunity to comment and/or request a hearing.

(8) A competitive electricity supplier may petition the commission for a waiver from full compliance with the renewable resource standards. The petition must include documentation and evidence showing that the competitive electricity supplier has undertaken all reasonable steps to procure renewable energy credits sufficient to comply with the applicable standards and could not achieve full compliance due to one or more of the following:

(a) the unavailability of sufficient renewable energy credits;

(b) a determination by a public utility that integrating additional eligible renewable resources into the electrical grid would jeopardize the reliability of the electrical system despite reasonable efforts to mitigate reliability concerns;

(c) full compliance would cause the competitive electricity supplier to exceed the cost caps in 69-3-2007, MCA; and

(d) other documented reasons beyond the competitive supplier's control.

(9) An electricity supplier that is a competitive electricity supplier in any compliance year must submit a renewable energy procurement plan as part of its annual report. The renewable energy procurement plan must explain whether the electricity supplier expects to be a competitive electricity supplier in the upcoming compliance year and, if so, provide:

(a) an estimate of the competitive electricity supplier's total retail sales for the next compliance year;

(b) an estimate of the quantity of renewable energy credits needed to comply with the renewable energy standards; and

(c) the anticipated source(s) of the renewable energy credits.

AUTH: 69-3-103, 69-3-2006, MCA

IMP: 69-3-2003, 69-3-2004, 69-3-2005, 69-3-2006, MCA

REASON: Chapter 246, 2007 Montana Session Laws 1111-1116, defined competitive electricity supplier and small customer, and imposed on competitive electricity suppliers an obligation to procure a percentage of electrical energy sold in Montana from eligible renewable resources. New Rule I is necessary for the PSC to implement and enforce the amended statute.

4. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

38.5.8301 RENEWABLE ENERGY RESOURCE STANDARD – PUBLIC UTILITIES (1) A public utility's ~~default supply~~ resource procurement plan pursuant to ARM 38.5.8201 through 38.5.8227 or integrated least cost resource plan pursuant to ARM 38.5.2001 through 38.5.2012 must thoroughly document compliance with the Montana Renewable Power Production and Rural Economic Development Act, ~~68-8-1001~~ 69-3-2001, et seq, MCA, hereafter renewable resource standards. Public utilities must consider the requirements of this rule an integral part of the planning and procurement processes described in ARM 38.5.8201 through 38.5.8227 and 38.5.2001 through 38.5.2012.

(2) For public utilities operating in Montana within the geographic boundaries of the Western Electricity Coordinating Council, all renewable energy credits used to comply with the renewable resource standards must be tracked and verified through the Western Renewable Energy Generation Information System (WREGIS) ~~or, if WREGIS is not operational, such other tracking system as the commission may approve on application of the utility.~~ For public utilities operating in Montana within the geographic boundaries of Midwest Reliability Organization, all renewable energy credits used to comply with the renewable resource standards must be tracked and verified through the Midwest Renewable Energy Tracking System (MRETS) ~~or, if~~

~~MRETS is not operational, such other tracking system as the commission may approve on application of the utility.~~

(3) Before entering into a long-term contract to purchase renewable energy credits, with or without associated electricity, for purposes of complying with the renewable resource standards, a public utility must petition the commission to certify that the renewable energy credits were produced by an eligible renewable resource. The petition may stand on its own or may be part of a request for advanced approval of the price(s), term, and quantity in a proposed contract to purchase renewable energy credits, either with or without associated electricity. If the applicable renewable energy tracking system in (2) provides a mechanism for ensuring that renewable energy credits are produced by eligible renewable resources, as defined in ~~69-8-1003~~ 69-3-2003, MCA, a public utility may rely on that mechanism. Otherwise a public utility's petition must contain sufficient information on the source of the renewable energy credits to allow the commission to determine whether the source is an eligible renewable resource.

(4) through (b) remain the same.

(c) full compliance would cause the public utility to exceed the cost caps in ~~69-8-1007~~ 69-3-2007, MCA; and

(d) through (6)(g) remain the same.

(h) testimony and supporting work papers demonstrating the calculation of the utility's avoided costs and associated cost caps provided for in ~~69-8-1007~~ 69-3-2007, MCA;

(i) a thorough explanation and justification for any other terms in the power purchase agreement for which the public utility is requesting ~~advanced~~ approval; and

(j) remains the same.

(7) The commission will process a petition for ~~advanced~~ approval under the contested case procedures of the Montana Administrative Procedure Act. The commission will consider requests for expedited processing of petitions for advanced approval, but petitions submitted pursuant to this rule are not subject to the 180 day limit in 69-8-421, MCA.

(8) If a public utility determines in its ongoing long-term planning process pursuant to ARM 38.5.8201 through 38.5.8227 or 38.5.2001 through 38.5.2012 that the cost of complying with the renewable resource standards will likely exceed the cost caps in ~~69-8-1007~~ 69-3-2007, MCA, the public utility must submit an application to the commission no later than 180 days prior to the beginning of the compliance year. The application must thoroughly document the public utility's efforts to procure the required renewable energy credits, the calculated cost of compliance, work papers showing the most current calculation of the cost caps, an explanation of the methodology that underlies the calculation of the cost caps, and the amount by which the cost cap would be exceeded if the public utility were to comply with the renewable resource standards. Following notice of the application and an opportunity for a public hearing, the commission will issue an order authorizing or denying full or partial forbearance from the renewable resource standard for that compliance year.

(9) On an annual basis on or before March 31, public utilities subject to the retail choice provisions in 69-8-201 must submit to the commission a report disclosing:

(a) Each electricity supplier that uses the public utility's transmission and/or distribution facilities to deliver electricity to retail customers in the state;

(b) For each electricity supplier, the information required in NEW RULE 1(3). A public utility must assign a unique number to each retail customer of an electricity supplier with respect to the information in NEW RULE (3)(c) and (3)(d) to protect the customer's identity.

AUTH: 69-3-103, 69-3-2006, MCA

MP: 69-3-2003, 69-3-2004, 69-3-2005, 69-3-2006, MCA

REASON: Chapter 220, 2007 Montana Session Laws 1017, directed the Code Commissioner to renumber Title 69, chapter 8, part 10, as an integral part of Title 69, chapter 3. Chapter 491, 2007 Montana Session Laws 2197 – 2219 eliminated references to default supply. Chapter 246 imposed on competitive electricity suppliers an obligation to procure a percentage of electrical energy sold in Montana from eligible renewable resources. The amendments are necessary to conform the rule to statutory changes and for the PSC to enforce the amended statute.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments (original and 10 copies) may also be submitted to Legal Division, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, MT 59620-2601, and must be received no later than December 6, 2007, 5:00 p.m., or may be submitted to the PSC through the PSC's web-based comment form at <http://psc.mt.gov> (go to "Contact Us," "Comment on Proceedings Online," then complete and submit the form no later than December 6, 2007. (PLEASE NOTE: When filing comments pursuant to this notice please reference "Docket No. L-07.10.4-RUL.")

5. The PSC, a commissioner, or a duly appointed presiding officer may preside over and conduct the hearing.

6. The Montana Consumer Counsel, 616 Helena Avenue, P.O. Box 201703, Helena, Montana 59620-1703, telephone (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

7. The PSC maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the PSC. Persons who wish to have their name added to the list should make a written request which includes that name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: electric utilities, providers and suppliers; natural gas utilities, providers and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines; motor carriers; rail carriers; and/or administrative procedures. Such written request may be mailed or delivered to Public Service Commission, Legal Division, 1701 Prospect Avenue, P. O. Box 202601, Helena, Montana 59620-2601, faxed to Connie Jones at (406) 444-7618,

emailed to [conniej@mt.gov](mailto:conniej@mt.gov), or may be made by completing a request form at any rules hearing held by the PSC.

7. An electronic copy of this Proposal Notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The bill sponsor notice requirements of 2-4-302 MCA, apply. On October 12, 2007, the Department of Public Service Regulation notified the primary sponsor, by first class mail and email, that it had begun work on the substantive content of the rule to implement HB 681. On October 25, 2007, the Department of Public Service Regulation notified the primary sponsors of SB 367, HB 25, and HB 681, by first class mail and email, that it had begun work on the wording of this proposal notice. The Department of Public Service Regulation will provide the primary sponsors a copy of the published proposal notice within 3 days after publication.

/s/ Greg Jergeson

Greg Jergeson, Chairman  
Public Service Commission

/s/ Robin A. McHugh

Reviewed by Robin A. McHugh

Certified to the Secretary of State October 29, 2007.